

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DESHAUNE D. DARLING,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 07-683-GMS
)	
CARL DANBERG, THOMAS CARROLL,)	
CORRECTIONAL MEDICAL SERVICE,)	
RICHARD P. DUSHUTTLE, M.D., and)	
DEPUTY WARDEN DAVID PIERCE,)	
)	
Defendants.)	

**THOMAS CARROLL’S AND DEPUTY WARDEN DAVID PIERCE’S
ANSWER TO PLAINTIFF’S AMENDED COMPLAINT**

COME NOW Thomas Carroll and Deputy Warden David Pierce (collectively “State Defendants”) hereby answer the unnumbered Amended Complaint as follows:

STATEMENT OF CLAIM

Denied that Plaintiff’s civil liberties were denied in any manner. Denied that State Defendants acted or failed to act in any manner which constitutes a violation of Plaintiff’s civil liberties. Any allegation directed at or pled against parties other than the employees of the State of Delaware are to be answered by another.

RELIEF

Denied that Plaintiff is entitled to any relief.

DEFENSES AND AFFIRMATIVE DEFENSES

The following defenses and affirmative defenses are set forth without admission of liability or improper conduct as to the State Defendants:

First Defense

1. This matter is barred by the Eleventh Amendment of the U.S. Constitution.

Second Defense

2. The complaint fails to state a legal claim for which relief could be granted.

Third Defense

3. The complaint should be dismissed, in whole or in part, for Plaintiff's failure to exhaust administrative remedies.

Fourth Defense

4. Plaintiff's claims, in whole or in part, are barred by the appropriate statute of limitation or repose.

Fifth Defense

5. The Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the State Defendants.

Sixth Defense

6. The Plaintiff has failed to mitigate any of his alleged damages

Seventh Defense

7. The State Defendants are entitled to qualified immunity.

Eighth Defense

8. As to any claims under state law, the State Defendants are entitled to immunity under the State Tort Claims Act, 10 Del. C. § 4001 *et seq.*

Ninth Defense

9. As to any claims under State law, the State Defendants are entitled to sovereign immunity in their official capacities.

Tenth Defense

10. The Plaintiff's claims are barred by his contributory negligence.

Eleventh Defense

11. This action is barred by the principles of res judicata and collateral estoppel.

Twelfth Defense

12. Insufficiency of service of process.

Thirteenth Defense

13. Insufficiency of process.

Fourteenth Defense

14. Lack of personal jurisdiction.

Fifteenth Defense

15. Lack of subject matter jurisdiction.

WHEREFORE, the State Defendants demand that judgment be entered in their favor as to all claims and against the Plaintiff as to all claims along with attorney fees to be awarded to the State Defendants.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Linda M. Carmichael

Linda M. Carmichael, DE # 3570

Deputy Attorney General

820 N. French Street, 6th Floor

Wilmington, DE 19801

(302) 577-8400

Linda.Carmichael@state.de.us

Attorney for Defendants Thomas Carroll and
David Pierce

DATE: May 19, 2008

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on May 19, 2008, I served two copies of Thomas Carroll's and Deputy Warden David Pierce's Answer to Plaintiff's Amended Complaint on the following:

Deshaune D. Darling
SBI# 229896
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Linda M. Carmichael
Linda M. Carmichael, DE # 3570
Deputy Attorney General
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Linda.Carmichael@state.de.us
Attorney for Defendants Thomas Carroll and
David Pierce